

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014050206

ORDER DENYING REQUEST FOR
CONTINUANCE

On May 29, 2014, the parties filed a request to continue the dates in this matter. On May 30, 2014, the Office of Administrative Hearings granted the parties' request and set this matter for hearing on August 4, 2014, the date requested by the parties. On July 18, 2014, Student moved for a further continuance. Between July 18 and July 23, 2014, San Francisco Unified School District (San Francisco) filed an opposition and Student filed two supplemental declarations in support of the continuance request.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Student sets out several grounds for a continuance such as

currently pending assessments of Student and availability of witnesses. These were grounds already known to Student and San Francisco when they asked to continue this matter to August 4, 2014. If in Student's view these previously known grounds were not sufficient to request a longer initial continuance, they do not now establish new grounds for a further continuance.

Student also sets forth two new grounds. First, Student contends that Father will be out of the country from September to December of 2014, but could return as early as November 2014 if a continuance was granted. However, Father is available to participate in the hearing on August 4, 2014, accordingly this future unavailability on hearing dates that do not exist, does not constitute good cause for a continuance. Second, Student contends that counsel was provided a large volume of educational records that had previously not been produced despite a prior request for records by Parent. While it may very well be that San Francisco has delayed in producing educational records, those records have been produced more than five business days before the hearing and Student has failed to establish how this has affected Student's counsel's ability to prepare for hearing.¹ Accordingly, the request to continue is denied.

IT IS SO ORDERED.

DATE: July 24, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ Nothing in this Order limits Student's right to file a due process hearing request if Student believes the withholding of the records was in violation of Student's rights and has somehow resulted in a denial of a free appropriate public education to Student or denied Parents meaningful participation in the decision making process regarding Student's special education.